

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 593

Introduced by Dierks, 40.

Read first time January 21, 2009

Committee: Agriculture

A BILL

1 FOR AN ACT relating to agriculture; to amend sections 21-2602,
2 67-409, 76-1520, 76-1521, 76-1523, and 76-1524, Reissue
3 Revised Statutes of Nebraska, and section 77-5203,
4 Revised Statutes Cumulative Supplement, 2008; to state
5 intent; to define terms; to restrict entity ownership
6 of agricultural land and farm or ranch operations; to
7 harmonize provisions; to provide for severability; and to
8 repeal the original sections.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) The Legislature finds that it is in the
2 public interest to encourage ownership and control of agricultural
3 production and agricultural assets by individuals and families
4 engaged in day-to-day labor and day-to-day management of farming
5 or ranching operations to ensure the most socially desirable
6 mode of agricultural production and to enhance and promote the
7 stability and well-being of rural society. Communities surrounded
8 by owner-operated farming or ranching operations have less poverty
9 and score better on most measures of socioeconomic vitality than
10 communities surrounded by farming or ranching operations owned
11 by individuals and families that are not engaged in day-to-day
12 labor and day-to-day management of such operations. Restricting
13 the use of limited liability entities in the agriculture sector
14 has been shown to result in rural communities with less poverty,
15 less unemployment, and higher percentages of farming and ranching
16 operations realizing cash gains. Therefor, it is in the public
17 interest to limit the use of limited liability entities and
18 their competitive benefits to farming and ranching operations
19 owned by individuals or families engaged in day-to-day labor and
20 day-to-day management of such operations. The Legislature finds
21 that government has conferred liability limits on certain forms
22 of business organizations and thus government has a responsibility
23 to ensure their benefits are used in the public interest by
24 establishing involvement in day-to-day labor and day-to-day
25 management as an essential eligibility requirement of individuals

1 and families allowed to use limited liability entities in farming
2 and ranching operations.

3 (2) Additionally, the Legislature finds that it is in the
4 public interest to safeguard the health and productivity of natural
5 resources. Owners of farming and ranching operations who are also
6 engaged in the operation of such operations have historically been
7 more responsible stewards of natural resources than uninvolved
8 investors. Investors not intimately involved in the operation of
9 farming or ranching operations are less likely to be responsible
10 stewards of natural resources if they are allowed to shield
11 themselves from liability for their negative environmental impacts
12 through use of limited liability entities. Therefor, it is in the
13 public interest to restrict the use of limited liability entities
14 by investors not involved in day-to-day labor and day-to-day
15 management of farming or ranching operations.

16 (3) The Legislature finds that it is in the public
17 interest to allow a total of five or fewer owner-operated farming
18 or ranching operations to combine to form limited liability
19 entities that will conduct farming or ranching operations to
20 enable owner-operated farming and ranching operations to achieve
21 economies of size by pooling resources.

22 (4) The Legislature finds that the federal government
23 has also found that it is in the public interest to foster and
24 encourage farming or ranching operations owned by the individuals
25 or families that operate them and to limit certain benefits created

1 by government to owner-operated farming or ranching operations.
2 In 7 U.S.C. 2266(a), as such section existed on January 1, 2009,
3 Congress states that "the maintenance of the family farm system of
4 agriculture is essential to the social well-being of the Nation
5 and the competitive production of adequate supplies of food and
6 fiber. Congress further believes that any significant expansion
7 of nonfamily owned large-scale corporate farming enterprises will
8 be detrimental to the national welfare". Consistent with that
9 policy, Congress requires recipients of federal loans for farming
10 or ranching operations to be "primarily and directly" engaged in
11 farming or ranching and in the case of entities, requires the
12 individuals holding majority interest to become "owner-operators of
13 not larger than family farms". In addition, Congress has limited
14 farm commodity program payments to farm operators who are actively
15 engaged in labor or management of their farming operations.

16 Sec. 2. For purposes of sections 1 to 5 of this act:

17 (1) Entity means any legal entity organized under the
18 laws of any state of the United States or any country that limits
19 the liability of the entity's owners for the liabilities of the
20 entity. Entity includes a corporation; limited liability company;
21 limited liability partnership; limited partnership; cooperative
22 association, corporation, or company, with or without stock;
23 or limited cooperative association. Entity also includes any
24 partnership of which an entity is a partner;

25 (2) Family farm or ranch entity means an entity in which

1 majority ownership, and in the case of a corporation the majority
2 of voting stock, is held by members of a family, or a trust or
3 family trust as defined in section 76-1511 or 76-1512 created for
4 the benefit of a member of that family, related to one another
5 within the fourth degree of kindred according to the rules of
6 civil law, or their spouses, at least one of whom is an individual
7 actively engaged in the day-to-day labor and day-to-day management
8 of the family farm or ranch entity's farming or ranching operation,
9 and none of whose stockholders or members are nonresident aliens or
10 entities or partnerships, unless all of the stockholders, members,
11 or partners of such entities or partnerships are individuals, or
12 spouses of individuals, related within the fourth degree of kindred
13 to the majority of stockholders or members in the family farm or
14 ranch entity;

15 (3) Farming or ranching means (a) the cultivation of
16 land for the production of agricultural crops, fruit, or other
17 horticultural products or (b) the ownership, keeping, or feeding of
18 animals for the production of livestock or livestock products;

19 (4) Farming or ranching operation means all farming or
20 ranching occurring on agricultural lands or within agricultural
21 structures, regardless of whether such activities, lands, or
22 structures are located within or outside of Nebraska; and

23 (5) Qualified owner-operator controlled farm or ranch
24 entity means an entity in which all ownership is held by
25 five or fewer individuals actively engaged in day-to-day labor

1 and day-to-day management of farming or ranching operations, at
2 least one of whom is actively engaged in the day-to-day labor
3 and day-to-day management of the entity's farming or ranching
4 operation.

5 Sec. 3. Any interpretation or application of sections 1
6 to 5 of this act involving a qualified individual with a disability
7 shall include reasonable modifications required under the federal
8 Americans with Disabilities Act of 1990.

9 Sec. 4. (1) No entity shall acquire or otherwise obtain
10 an interest, whether legal, beneficial, or otherwise, in title to
11 real estate used for farming or ranching in this state or engage in
12 farming or ranching.

13 (2) Subsection (1) of this section shall not apply to:

14 (a) A family farm or ranch entity;

15 (b) A qualified owner-operator controlled farm or ranch
16 entity;

17 (c) Nonprofit corporations;

18 (d) A farming or ranching operation conducted by an
19 Indian tribal corporation within the bounds of its own reservation;

20 (e) Agricultural land which, as of the effective date of
21 this act, is being farmed or ranched by an entity, is owned or
22 leased by an entity, or in which there is a legal or beneficial
23 interest in the title to such land directly or indirectly held
24 by an entity, so long as such land or interest in such land is
25 held in continuous ownership or under continuous lease by the same

1 entity and including such additional ownership or leasehold as is
2 reasonably necessary to meet the requirements of pollution control
3 regulations. For purposes of this subsection, land purchased on
4 a contract signed as of the effective date of this act shall be
5 considered as owned on the effective date of this act;

6 (f) A farming or ranching operation conducted for
7 research or experimental purposes if any commercial sales from
8 such operation are only incidental to the research or experimental
9 objectives of the operation;

10 (g) A farming or ranching operation conducted for the
11 purpose of raising poultry for the production of poultry products,
12 including eggs, or as a poultry hatchery;

13 (h) Land leased by alfalfa processors for the production
14 of alfalfa;

15 (i) A farming or ranching operation conducted for the
16 purpose of growing seed, nursery plants, or sod;

17 (j) Mineral rights on agricultural land;

18 (k) Agricultural land acquired or leased by an entity for
19 immediate or potential use for nonfarming or nonranching purposes.

20 An entity may hold such agricultural land for a period not to
21 exceed five years in such acreage as may be necessary to its
22 nonfarm or nonranch business operation, but pending the development
23 of such agricultural land for nonfarm or nonranch purposes, such
24 land shall not be used for farming or ranching except under lease
25 to farming operations that do not violate this section;

1 (l) Agricultural lands or livestock acquired by an entity
2 by process of law in the collection of debts or by any procedures
3 for the enforcement of a lien, encumbrance, or claim thereon,
4 whether created by mortgage or otherwise. Any lands so acquired
5 shall be disposed of within a period of five years and shall
6 not be used for farming or ranching prior to being disposed of
7 except under a lease to farming operations that do not violate this
8 section;

9 (m) A bona fide encumbrance taken for purposes of
10 security;

11 (n) Custom spraying, fertilizing, or harvesting;

12 (o) Livestock futures contracts, livestock purchased for
13 slaughter within two weeks, or livestock purchased and resold
14 within two weeks; and

15 (p) The interest of an entity acting as trustee with
16 regard to agricultural land held in a trust for the benefit of an
17 individual or entity that qualifies to own such land under this
18 section.

19 (3) If a family farm or ranch entity ceases to be a
20 family farm or ranch entity, it shall have fifty years to either
21 requalify as a family farm or ranch entity or dissolve and return
22 to personal ownership if (a) majority ownership of such entity
23 continues to be held by individuals related to one another within
24 the fourth degree of kindred or their spouses or a trust created
25 for the benefit of such individuals and (b) the landholdings of

1 the family farm or ranch entity are not increased. With regard
2 to agricultural land leased by the family farm or ranch entity at
3 the time it ceases to be a family farm or ranch entity, a renewal
4 of the entity's lease on such agricultural land or the entity's
5 purchase of such agricultural land shall not constitute an increase
6 in landholdings.

7 Sec. 5. (1) The Secretary of State shall monitor
8 purchases of agricultural land by entities and the farming and
9 ranching operations of entities and notify the Attorney General
10 of any possible violations. If the Attorney General has reason
11 to believe that an entity is violating section 4 of this act,
12 he or she shall commence an action in district court to enjoin
13 any pending illegal land purchase or livestock operation or forced
14 divestiture of land held in violation of section 4 of this act.
15 The court shall order any land held in violation of section 4 of
16 this act to be divested within two years. If land so ordered by
17 the court has not been divested within two years, the court shall
18 declare the land escheated to the State of Nebraska.

19 (2) If the Secretary of State or Attorney General fails
20 to perform his or her duties under this section, Nebraska citizens
21 and entities shall have standing in district court to seek
22 enforcement.

23 Sec. 6. Section 21-2602, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 21-2602 ~~(1)~~ A limited liability company may be organized

1 pursuant to the Limited Liability Company Act for any lawful
2 purpose other than for the purpose of being an insurer as described
3 in section 44-102.

4 ~~(2) A limited liability company organized pursuant to the~~
5 ~~act shall be deemed to be a syndicate for purposes of Article XII,~~
6 ~~section 8, of the Constitution of Nebraska, except that a limited~~
7 ~~liability company in which the members are members of a family, or~~
8 ~~a trust created for the benefit of a member of that family, related~~
9 ~~to one another within the fourth degree of kindred according to the~~
10 ~~rules of civil law, or their spouses, at least one of whom is a~~
11 ~~person residing on or actively engaged in the day-to-day labor and~~
12 ~~management of the farm or ranch, and none of whom are nonresident~~
13 ~~aliens, shall not be deemed to be a syndicate for purposes of~~
14 ~~Article XII, section 8, of the Constitution of Nebraska.~~

15 Sec. 7. Section 67-409, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 67-409 ~~(1)~~ A partnership is an entity distinct from its
18 partners.

19 ~~(2) A limited liability partnership is a syndicate~~
20 ~~for purposes of Article XII, section 8, of the Constitution of~~
21 ~~Nebraska, except that a registered limited liability partnership~~
22 ~~in which the partners are members of a family, or a trust created~~
23 ~~for the benefit of a member of that family, related to one another~~
24 ~~within the fourth degree of kindred according to the rules of civil~~
25 ~~law, or their spouses, at least one of whom is a person residing~~

1 on or actively engaged in the day-to-day labor and management of
2 the farm or ranch and none of whom are nonresident aliens, is
3 not a syndicate for purposes of Article XII, section 8, of the
4 Constitution of Nebraska. A limited liability partnership continues
5 to be the same entity that existed before the filing of a statement
6 of qualification under section 67-454.

7 Sec. 8. Section 76-1520, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 76-1520 (1) A person serving as the president, a general
10 partner, any other officer, or an authorized representative of a
11 corporation, limited partnership, limited liability partnership, or
12 limited liability company an entity as defined in section 2 of this
13 act or a corporate trustee of a trust shall report to the Secretary
14 of State:

15 (a) Any interest in real estate held by the corporation,
16 limited partnership, limited liability partnership, limited
17 liability company, such entity or trust used for farming or
18 ranching in this state as defined under Article XII, section 8, of
19 the Constitution of Nebraska; section 2 of this act;

20 (b) Any activity or enterprise performed, conducted,
21 or engaged in by the corporation, limited partnership, limited
22 liability partnership, limited liability company, entity or trust
23 defined as farming or ranching in this state under Article XII,
24 section 8, of the Constitution of Nebraska; and section 2 of this
25 act;

1 (c) Whether the ~~corporation, limited partnership, limited~~
2 ~~liability partnership, limited liability company, entity~~ or trust
3 contracts with others engaged in farming or ranching for the care
4 or production of agricultural commodities, including livestock;
5 ~~and-~~

6 (d) The names and addresses of the shareholders or
7 members of an entity reporting under subdivision (a), (b), or (c)
8 of this subsection.

9 (2) The reports required by this section shall be open to
10 the public.

11 (3) For purposes of sections 76-1520 to 76-1524, interest
12 in real estate used for farming or ranching includes legal,
13 beneficial, and other interests, including interests held by a
14 ~~corporation, limited partnership, limited liability partnership,~~
15 ~~limited liability company, or~~ an entity as defined in section 2
16 of this act or corporate trust in a general partnership holding
17 real estate used for farming or ranching, but does not include an
18 interest in real estate used for farming or ranching acquired by
19 a ~~corporation, limited partnership, limited liability partnership,~~
20 ~~limited liability company,~~ such an entity or trust by process
21 of law in the collection of debts or by any procedures for the
22 creation or enforcement of a lien, encumbrance, or claim on the
23 real estate, whether created by mortgage or otherwise.

24 Sec. 9. Section 76-1521, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 76-1521 (1) The report required by section 76-1520 shall
2 be on a form provided by the Secretary of State. The Secretary
3 of State may incorporate the form with other forms required to be
4 filed by entities identified in subsection (1) of section 76-1520.
5 If there has been no change in the information contained in the
6 previous report filed by the reporting entity, the reporting entity
7 may so indicate in a space provided on the reporting form for that
8 purpose.

9 (2) The Secretary of State shall include a list of
10 exemptions to the prohibitions contained in ~~Article XII, section 8,~~
11 ~~of the Constitution of Nebraska~~ section 4 of this act and a means
12 by which persons filing the form may indicate, if applicable, which
13 exemptions apply to the reporting entity. The reporting entity may
14 include or attach a statement indicating the basis upon which the
15 reporting entity claims exemption from the prohibitions contained
16 in ~~Article XII, section 8, of the Constitution of Nebraska.~~ section
17 4 of this act.

18 (3) The Secretary of State shall annually prepare a
19 report indicating the total number and types of entities and trusts
20 reporting under sections 76-1520 to 76-1524, ~~the number of entities~~
21 ~~reporting as a corporation,~~ as a limited partnership, as a limited
22 liability partnership, as a limited liability company, and as a
23 ~~trust~~ and the basis upon which the reporting entities and trusts
24 claim exemption from the prohibitions contained in ~~Article XII,~~
25 ~~section 8, of the Constitution of Nebraska.~~ section 4 of this act.

1 The Secretary of State shall deliver the report to the Clerk of the
2 Legislature on or before January 1 each year.

3 Sec. 10. Section 76-1523, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 76-1523 (1) The Secretary of State shall use reports
6 generated under section 76-1517 to assist in the identification
7 of trusts engaged in farming or ranching activity as defined in
8 ~~Article XII, section 8,~~ of the Constitution of Nebraska, section 2
9 of this act.

10 (2) Any corporate trustee failing to report the
11 information required by section 76-1520 or filing false information
12 shall be punished by a fine of not more than five hundred dollars.

13 (3) Any fines received pursuant to this section shall be
14 remitted to the State Treasurer for ~~credit to the temporary school~~
15 ~~fund.~~ distribution in accordance with Article VII, section 5, of
16 the Constitution of Nebraska.

17 Sec. 11. Section 76-1524, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 76-1524 The Secretary of State and the Attorney General,
20 for the enforcement of both sections 76-1520 to 76-1524 and ~~Article~~
21 ~~XII, section 8,~~ of the Constitution of Nebraska, section 4 of this
22 act, shall have the authority to subpoena witnesses, compel their
23 attendance, examine them under oath, and require the production
24 of documents, records, or tangible things deemed relevant to the
25 proper performance of their duties. Service of any subpoena shall

1 be made in the manner prescribed by the rules of civil procedure.

2 Sec. 12. Section 77-5203, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:

4 77-5203 For purposes of the Beginning Farmer Tax Credit
5 Act:

6 (1) Agricultural assets means agricultural land,
7 livestock, farming, or livestock production facilities or buildings
8 and machinery used for farming or livestock production located in
9 Nebraska;

10 (2) Board means the Beginning Farmer Board created by
11 section 77-5204;

12 (3) Farm means any tract of land over ten acres in area
13 used for or devoted to the commercial production of farm products;

14 (4) Farm product means those plants and animals useful
15 to man and includes, but is not limited to, forages and sod
16 crops, grains and feed crops, dairy and dairy products, poultry
17 and poultry products, livestock, including breeding and grazing
18 livestock, fruits, and vegetables;

19 (5) Farming or livestock production means the active use,
20 management, and operation of real and personal property for the
21 production of a farm product;

22 (6) Financial management program means a program for
23 beginning farmers or livestock producers which includes, but
24 is not limited to, assistance in the creation and proper use
25 of record-keeping systems, periodic private consultations with

1 licensed financial management personnel, year-end monthly cash flow
2 analysis, and detailed enterprise analysis;

3 (7) Owner of agricultural assets means:

4 (a) An individual or a trustee having an ownership
5 interest in an agricultural asset located within the State of
6 Nebraska who meets any qualifications determined by the board;

7 (b) A spouse, child, or sibling who acquires an ownership
8 interest in agricultural assets as a joint tenant, heir, or devisee
9 of an individual or trustee who would qualify as an owner of
10 agricultural assets under subdivision (7)(a) of this section; ~~or~~

11 (c) A partnership, corporation, limited liability
12 company, or other business entity having an ownership interest in
13 an agricultural asset located within the State of Nebraska which
14 meets any additional qualifications determined by the board; or

15 (d) A family farm or ranch entity or a qualified
16 owner-operator controlled farm or ranch entity as defined in
17 section 2 of this act;

18 (8) Qualified beginning farmer or livestock producer
19 means an individual who is a resident individual as defined in
20 section 77-2714.01, who has entered farming or livestock production
21 or is seeking entry into farming or livestock production, who
22 intends to farm or raise crops or livestock on land located
23 within the state borders of Nebraska, and who meets the
24 eligibility guidelines established in section 77-5209 and such
25 other qualifications as determined by the board; and

1 (9) Share-rent agreement means a rental agreement
2 in which the principal consideration given to the owner of
3 agricultural assets is a predetermined portion of the production of
4 farm products from the rented agricultural assets.

5 Sec. 13. If any section in this act or any part of any
6 section is declared invalid or unconstitutional, the declaration
7 shall not affect the validity or constitutionality of the remaining
8 portions.

9 Sec. 14. Original sections 21-2602, 67-409, 76-1520,
10 76-1521, 76-1523, and 76-1524, Reissue Revised Statutes of
11 Nebraska, and section 77-5203, Revised Statutes Cumulative
12 Supplement, 2008, are repealed.